

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C.

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In the Matter of)

JUL 9 1999

Truth-in-Billing and)
 Billing Format)CC Docket No. 98-170)
 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

**COMMENTS OF
 THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its Comments in the above captioned proceeding.² CTIA objects to the adoption of additional rules governing the billing relationship between CMRS carriers and their customers, whether in the form of (1) standardized labels for charges related to Federal regulatory action or (2) additional truth in billing regulations for CMRS providers.³

I. INTRODUCTION AND SUMMARY

In its initial Comments in this proceeding, CTIA advocated that the Commission (1) tailor its billing regulations to the competitive circumstances of the CMRS industry; (2) respect

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-72 (rel. May 11, 1999) ("Billing Further Notice").

³ Consistent with the Commission's segmentation of comment dates, CTIA will address the issue of the application of additional rules to CMRS carriers in later filed comments.

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CMRS carriers' First Amendment rights in describing Federal, State, and local taxes and mandates; (3) permit carriers to require that each government entity imposing taxes and mandates on wireless services provide explanatory information, including a toll-free telephone number to receive customer inquiries; (4) refrain from adopting rules governing CMRS customer service representatives; and (5) assert exclusive jurisdiction over all customer complaints pursuant to Section 208 of the Communications Act.⁴ By such action the Commission will promote the socially beneficial goals of ensuring that consumers have accurate, understandable bills and the means to protect themselves from unscrupulous carrier conduct without unduly burdening carriers.

CTIA supports the Commission's decision to take "common sense steps"⁵ to ensure that consumers are protected from unscrupulous carriers. Consistent with this common sense approach, the Commission has preliminarily rejected a "one size fits all" regulatory regime in favor of more flexible, minimal regulations that recognize the unique circumstances of the CMRS industry. As the Commission recognizes, CMRS carrier practices and physical differences between wireline and wireless networks essentially prevent slamming. Similarly, cramming is much less likely to occur in CMRS bills because competition has forced wireless carriers to give away to their customers many of the services wireline carriers provide at a separate charge. CMRS competition, and wireless users' willingness to take their business to a rival provider, also promotes truthful billing practices. These distinctions between CMRS

⁴ 47 U.S.C. § 208.

⁵ Billing Further Notice at ¶ 1.

carriers and other telecommunications providers dictate against stringent regulation of CMRS carriers' billing practices.

Notably, there are two distinct issues in this proceeding: (1) legitimate consumer protection concerns documented by a factual record of complaints to the Commission, and (2) concerns about the political fallout associated with funding a new Federal program. As to the political aspects of the proposals in the Billing Further Notice, CTIA believes that the Commission should refrain from adopting standardized labels for certain Federally mandated charges. The labels the Commission has proposed do not provide consumers with clearer or better billing information, but rather seek to hide the source of the additional charges -- the Federal government. As such, they raise significant First Amendment issues by restricting carriers' core freedoms of speech.

II. STANDARDIZED LABELS FOR CERTAIN CHARGES ARE INAPPROPRIATE AND RAISE SERIOUS FIRST AMENDMENT ISSUES

The Commission's decision to require that all carriers include standardized labels to describe certain charges related to Federal action and its proposal to adopt specific labels is counterintuitive and inappropriate. The proposed standardized labels -- "Long Distance Access," "Federal Universal Service," and "Number Portability" -- are ostensibly designed to provide full and non-misleading descriptions.⁶ The Commission's objection to the carriers' labels, and its desire to substitute its own uniform labels, stems largely from its concern that consumers confuse

⁶ Id. at ¶¶ 49-51.

the fees as federally-imposed taxes and may also be less inclined to engage in price comparisons with competing carriers.⁷

The Commission, though, cannot dispute that it does impose universal service contributions and other Federal fees on CMRS carriers and other telecommunications providers. As noted by Commissioner Powell, "[c]arriers would not be putting these line items on their bills if we [the Commission] were not requiring them to pay the underlying charges or if we did not allow carriers to recover these charges from end users."⁸ Moreover, the fact that the Commission created the underlying charges without establishing parameters for the recovery of such fees does not lessen their nature as Federally-imposed charges.⁹ Thus, try as it might, "the Commission cannot deny that the underlying charges to the carriers are mandated by the federal government, even if the method of recovery has not been regulated."¹⁰

⁷ Id. at ¶ 53 ("The record in this proceeding supports our concern that the failure of carriers to label and accurately describe certain line item charges on their bills has led to increased consumer confusion about the nature of these charges. Several factors appear to have contributed to this confusion. The names associated with these charges as well as accompanying descriptions (or entire lack thereof) may convince consumers that all of these fees are federally mandated. In addition, a lack of consistency in the way such charges are [labeled] by carriers makes it difficult for consumers accurately to compare the price of telecommunications services offered by competing carriers.") (citations omitted).

⁸ Billing Further Notice, Separate Statement of Commissioner Michael K. Powell, Concurring at 72 ("Powell Statement").

⁹ Notably, in the case of CMRS, there are no off-setting reductions in access charges that may justify a carrier absorbing the cost as opposed to passing it along. For this reason, the Commission is less justified in regulating the labels used by CMRS carriers to describe their charges to consumers.

¹⁰ Billing Further Notice, Dissenting Statement of Commissioner Harold Furchtgott-Roth at 78 ("Furchtgott-Roth Statement").

There are two separate issues in this proceeding: legitimate consumer protection concerns documented by a factual record of complaints to the Commission, and concerns about the political fallout associated with the funding of a new Federal program. The Commission should refrain from miring its truth in billing regulations in political controversies that implicate significant First Amendment issues, especially when it has failed to establish a sufficient nexus between the identified problem -- customer confusion -- and the proposed solution. Simply stated, the Commission has not -- and cannot -- defend the use of these phrases as inherently more understandable than the labels telecommunications carriers use currently.¹¹

Moreover, how can "truth in billing" be advanced if a Commission rule forbids carriers from identifying the source of the charge in their bill. In fact, such a failure to acknowledge the source of the fee could be construed under the Commission's truth in billing rules as misleading.¹² Indeed, uniform labels are of dubious merit to those consumers wishing to comparison shop.¹³

¹¹ See Furchtgott-Roth Statement at 92 ("What proof is there that the agency's [Commission's] hand-picked words will in fact, not just in theory -- and materially -- alleviate the posited harm?"); *id.* ("The notion of consumer confusion from putatively misleading labels, and of the harms resulting from any such confusion, is entirely conjectural. The idea that the words selected by the Commission will cure that confusion is unfounded by any empirical reality. Nor is there any nexus between the consumer behavior that the Commission asserts will result from the use of certain labels and the ultimate goal of ensuring fair prices.").

¹² See Billing Further Notice at ¶ 39 (The Commission's rules are designed to address consumers' complaints that they lack sufficient information to determine the nature of service for which they are being billed.).

¹³ Powell Statement at 72 (Even if the Commission adopts "uniform labels for line items, consumers will remain powerless to compare the manner in which carriers that use explicit line items to recover their federal charges against carriers that essentially hide such recovery in their other rates."). In the competitive CMRS market, demand is elastic;

The Commission should take all steps to avoid "censorship of speech integrally related to a political dispute over social policy and taxation."¹⁴ As noted by Commissioner Furchtgott-Roth, the Commission's determinations involve not merely commercial speech -- of which the Commission's proposed regulation is already constitutionally suspect -- but also involves core political expression. CTIA does not question the Federal government's authority to ensure that all telecommunications consumers receive truthful, non-misleading bills.¹⁵ But in the case of its proposal to adopt specific standardized labels:

these regulations involve politically charged speech, i.e., statements indicating who should be held responsible for the imposition of this charge on the American telephone consumer. Government assessment of the 'truth' regarding its own responsibility for consumer charges is entirely different than government assessment of the accuracy of . . . interest rate quotations[s]. The incentives for government self-dealing and self-protection in the former case, at the expense of free speech about government activity, are obvious.¹⁶

thus price increases, no matter their source, can drive away consumers. The alternative to passing along costs to customers is for a carrier to absorb them. How a CMRS carrier decides to recover Universal Service charges from any individual customer is a competitive decision, and, in a competitive market, should not be subject to regulatory requirements.

¹⁴ Furchtgott-Roth Statement at 79. The Supreme Court "has not approved a blanket ban on commercial speech unless the expression itself was flawed in some way, either because it was deceptive or related to unlawful activity." 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484, 500 (1996)(quoting Central Hudson Gas and Electric Corp. v. Public Service Comm'n of New York, 447 U.S. 557, 566, n.9 (1980)).

¹⁵ As CTIA has noted previously, line-item charges on a subscriber's bill are not inherently misleading or deceptive. By contrast, they detail on a charge-by-charge basis for the subscriber the specific fees assessed and the basis for their assessment.

¹⁶ Furchtgott-Roth Statement at 99.

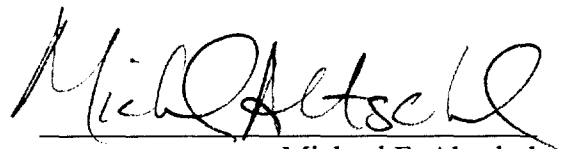
The Commission should avoid the First Amendment controversy, especially given the relatively specious expected benefits to consumer understanding.

III. CONCLUSION

For these reasons, CTIA respectfully requests that the Commission refrain from imposing standardized labeling obligations to govern the billing relationship between CMRS carriers and their customers.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**

A handwritten signature in black ink, appearing to read "Michael Altschul", written over a horizontal line.

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